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7 UNITED STATES DISTRICT COURT

8 FOR THE WESTERN DISTRICT OF WASHINGTON

9 SEATTLE DIVISION

10 INNOVATIVE SPORTS MANAGEMENT,) Case No.
11 INC. a New Jersey corporation,)
12 Plaintiff,) **COMPLAINT**
13 vs.)
14 CAFECONLECHE INCORPORATED, a)
15 Washington corporation, d/b/a Club Sur; and)
16 FRANCISCO BONIFAZ CHAVEZ, and the)
17 marital community thereof)
18 Defendants.)
19 _____

20 PLAINTIFF ALLEGES:

21 **JURISDICTION**

22 1. Jurisdiction is founded on the existence of a question arising under particular
23 statutes. This action is brought pursuant to several federal statutes, the federal Communications
24 Act of 1934, as amended, 47 U.S.C. § 605, et seq., and, in the alternative, The Cable &
25 Television Consumer Protection and Competition Act of 1992, as amended, 47 U.S.C. § 553, et
26 seq.

27 2. This Court has jurisdiction of the subject matter of this action pursuant to 28
28 U.S.C. § 1331, which states that the District Courts shall have original jurisdiction of all civil

1 actions arising under the Constitution, laws, or treaties, of the United States. This Court has
2 subject matter jurisdiction over the state law claims pursuant to 28 U.S.C. § 1337 (supplemental
3 jurisdiction).

4 3. This Court has personal jurisdiction over the parties in this action as a result of the
5 Defendants' wrongful interception, reception, publication, display, exhibition, and taking of
6 Plaintiff's property in the State of Washington which violated Plaintiff's rights as the exclusive
7 commercial distributor of the televised fight program described below.

VENUE

9 4. Pursuant to 47 U.S.C. § 605 and § 553, venue is proper in the District of
10 Washington, because a substantial part of the events or omissions giving rise to the claim
11 occurred in this District.

INTRA-DISTRICT ASSIGNMENT

13 5. Assignment to the Seattle Division of the District of Washington is proper
14 because a substantial part of the events or omissions giving rise to the claim occurred in King
15 County, and/or the United States District Court for the District of Washington has decided that
16 suits of this nature, and each of them, are to be heard by the Courts in this particular Division.

THE PARTIES

18 6. Plaintiff, INNOVATIVE SPORTS MANAGEMENT, INC. is, and at all relevant
19 times mentioned was, a New Jersey corporation with its principal place of business located at 64
20 North Summit Street, Suite 218, Tenafly, New Jersey.

21 7. Defendant CAFECONLECHE INCORPORATED (at times “Corporate
22 Defendant”) is a Washington corporation registered under the Secretary of State’s Unified
23 Business Number 603-144-212, at all material times it was and is doing business under name
24 “Club Sur,” (hereinafter the “Business”) at 2901 First Avenue South, Seattle, Washington,
25 98134, King County, (at times the location will be called the “Commercial Establishment”).

26 8. At all times material hereto, Corporate Defendant was the holder and licensee of

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1 the Washington liquor license number 403689

2 9. FRANCISCO BONIFAZ CHAVEZ (“Chavez”) is an individual specifically
3 identified as the president and governor of Corporate Defendant. *See* Washington Department of
4 Revenue Business Lookup Unified Business Number 603-144-212¹.

5 10. To the extent Chavez’s violation of the statutes referenced herein has been in the
6 furtherance of a marital community, all relief sought against Chavez is sought against him and
7 his marital community.

8 **COUNT I**

9 **(Violation of Title 47 U.S.C. § 605)**

10 11. Plaintiff hereby incorporates by reference all of the allegations contained in
11 paragraphs 1-10, inclusive, as though set forth herein at length.

12 12. Pursuant to contract, Plaintiff was granted the exclusive nationwide commercial
13 distribution (“closed-circuit”) rights to Peru v. Iceland International Friendly Soccer Game
14 telecast nationwide on Tuesday, March 27, 2018, which included all under-card bouts and fight
15 commentary encompassed in the television broadcast of the event, herein referred to as the
16 “Program.”

17 13. Pursuant to its distribution contract, Plaintiff was able to and did enter into
18 subsequent sublicensing agreements with various commercial entities throughout North America,
19 including entities within the State of Washington, by which it granted, for a fee, those entities
20 limited sublicensing rights, specifically the right to publicly exhibit the Program within their
21 respective commercial establishments in the hospitality industry (i.e., hotels, racetracks, casinos,
22 bars, taverns, restaurants, social clubs, etc.), such as the Corporate Defendant’s Commercial
23 Establishment.

24 14. As a commercial distributor and licensor of sporting events, including the
25 Program, Plaintiff expended substantial monies marketing, advertising, promoting,

26 ¹ Available at <https://ccfs.sos.wa.gov/#/BusinessSearch/BusinessInformation>

1 administering, and transmitting the Program to its customers, the aforementioned commercial
2 entities.

3 15. Plaintiff is informed and believes, and alleges thereon, that the Corporate
4 Defendant was at all material times the owner of the Business with dominion, control, oversight
5 and management of the Business.

6 16. Plaintiff is informed and believes, and alleges thereon that Chavez individually
7 and as the President of the Corporate Defendant, is one of the persons in charge with dominion,
8 control, oversight, and management of the Business.

9 17. Plaintiff is informed and believes, and alleges thereon that on the night of
10 Program, Chavez, individually and as the President of the Corporate Defendant, had the right and
11 ability to supervise the activities of the Business, which included the unlawful interception and
12 display of the Program, and, among other responsibilities, the obligation to ensure that the liquor
13 license was not used in violation of law.

14 18. Plaintiff is informed and believes, and alleges thereon that on the night of the
15 Program, Chavez actively and consciously and specifically directed or permitted the employees
16 of the Business to unlawfully intercept and broadcast Plaintiff's Program at the Commercial
17 Establishment, or intentionally intercepted, and exhibited the Program at the Commercial
18 Establishment himself. The actions of the employees of the Business are directly imputable to
19 Chavez by virtue of his responsibility for the operation of the Business.

20 19. Plaintiff is informed and believes, and alleges thereon that Chavez had a strong
21 obvious and direct financial interest in the revenue generated from the potential and actual
22 increased patronage of the Business, in the form of sales, tips, and other related income, from
23 allowing or enabling the unlawful interception of Plaintiff's Program. That financial interest
24 included increased profits.

25 20. On March 27, 2018, the Program was exhibited at the Commercial Establishment
26 on one or more televisions. It was exhibited for the enjoyment of the patrons of the Business in

1 order to generate revenue for the Business.

2 21. Defendants did not pay Plaintiff the required fee to exhibit the Program at the
3 Commercial Establishment. Without paying Plaintiff for the right to exhibit the Program,
4 Defendants had no right to exhibit the Program at the Commercial Establishment.

5 22. The only way Defendants could have exhibited the Program at the Commercial
6 Establishment was through either the satellite or cable transmission of the Program. The only
7 way the Defendants could exhibit the Program without paying Plaintiff the required fee for a
8 commercial establishment was to unlawfully intercept that transmission, including paying for the
9 right to view the Program at a residence and then diverting the transmission to the Business.

10 23. Upon information and belief, the Defendants received the transmission of the
11 Program for commercial exhibition.

12 24. With full knowledge that the Program was not to be intercepted, received,
13 published, divulged, displayed, and/or exhibited by commercial entities unauthorized to do so,
14 each and every one of the above-named Defendants, either through direct action or through
15 actions of employees or agents directly imputable to Defendants, did unlawfully intercept the
16 satellite transmission of Program and exhibit the Program at the time of its transmission at the
17 Commercial Establishment for the direct financial benefit of the Business and Chavez.

18 25. 47 U.S.C. § 605, et seq. prohibits the unauthorized publication or use of satellite
19 communications (such as the transmission of the Program for which Plaintiff had the commercial
20 distribution rights).

21 26. By reason of the aforesaid mentioned conduct, Defendants, and each of them,
22 violated 47 U.S.C. § 605, et seq.

23 27. Said interception and exhibition of the Program by the Defendants was done
24 willfully, i.e., actively, consciously and with specific intent.

25 28. Said unauthorized interception and exhibition of the Program by each of the
26 Defendants was done for purposes of direct and indirect commercial advantage and private

1 financial gain.

2 29. By reason of the Defendants' violation of 47 U.S.C. § 605, et seq., Plaintiff has the
3 private right of action pursuant to 47 U.S.C. § 605.

4 30. As the result of the aforementioned Defendants' violation of 47 U.S.C. § 605, and
5 pursuant to said § 605, Plaintiff is entitled to the following from each Defendant:

- 6 a. Statutory damages for each violation in an amount of not less than \$1,000,
7 and up to \$10,000 pursuant to 47 U.S.C. § 605(e)(3)(C)(i)(II); and also
8 b. Statutory damages for each willful violation for commercial advantage or
9 private financial gain in an amount up to \$100,000.00 pursuant to 47
10 U.S.C. § 605(e)(3)(C)(ii), and also
11 c. Recovery of full costs, including reasonable attorney fees, pursuant to 47
12 U.S.C. § 605(e)(3)(B)(iii).

13 COUNT II

14 (Violation of Title 47 U.S.C. § 553) 15 (Alternative Claim to Count 1)

16 31. Plaintiff hereby incorporates by reference all of the allegations contained in
17 paragraphs 1-32, inclusive, as though set forth herein at length.

18 32. The unauthorized interception and exhibition of the transmission of the Program
19 by Defendants was prohibited by 47 U.S.C. § 553, et seq.

20 33. By reason of the aforesaid-mentioned conduct, Defendants violated Title 47
21 U.S.C. § 553, et seq.

22 34. By reason of Defendants' violation of 47 U.S.C. § 553, et seq., Plaintiff has the
23 private right of action pursuant to 47 U.S.C. § 553.

24 35. As the result of Defendants' violation of 47 U.S.C. § 553, Plaintiff is entitled to
25 the following from each Defendant:

- 26 a. Statutory damages for each violation in an amount of not less than \$250 up
to \$10,000.00 pursuant to 47 U.S.C. § 553(c)(3)(A)(ii); and also

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- b. Statutory damages for each willful violation for commercial advantage or private financial gain in an amount up to \$50,000.00 pursuant to 47 U.S.C. § 553(c)(3)(B); and also the recovery of full costs pursuant to 47 U.S.C. § 553(c)(2)(C); and also
 - c. Plaintiff's reasonable attorney fees, in the discretion of this Court, pursuant to 47 U.S.C. § 553(c)(2)(C).

COUNT III
(Trespass of Chattel)

36. Plaintiff hereby incorporates by reference all of the allegations contained in paragraphs 1-35, inclusive, as though set forth herein at length.

37. The Program was, for the purpose of distribution, transmission, and broadcast at a domestic commercial establishment, Plaintiff's property. Defendants willfully took and appropriated Plaintiff's property for their financial gain. They did so without permission of Plaintiff because they did not pay for the privilege of using the Program. Defendants intended to and did gain financially from that use of Plaintiff's property. Plaintiff was damaged in the amount of \$1,500, although Plaintiff reserves the right to amend this Complaint to increase that amount, or prove a different amount at trial.

WHEREFORE, Plaintiff prays for judgment as follows:

As to the First Count against each defendant, jointly and severally:

1. For statutory damages in the amount of \$20,000 for willful violation of 47 U.S.C. § 605, et seq. if Defendants elect not to answer or oppose this complaint. If Defendants oppose this complaint, Plaintiff asks this Court to award up to the full amount of statutory damages, or \$110,000.00, against Defendants, and each of them;
 2. For reasonable attorney fees, as mandated by statute;
 3. For all costs of suit, including but not limited to filing fees, service of process fees, investigative costs; and

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4. For such other and further relief as this Court may deem just and proper.

2 In the alternative to Count 1, as to the Second Count against each defendant, jointly and
3 severally:

4 If Defendants do not answer this complaint and judgment is awarded under Count 1, then
5 Plaintiff will not request judgment on Count 2. If, however, Defendants answer this complaint
6 and it is determined that Defendants intercepted and exhibited the cable transmission of the
7 Program, then Plaintiff prays for judgment as follows:

1. For statutory damages under 47 U.S.C. § 553, et seq. in the amount of \$60,000.00 against Defendants, and each of them;
2. For reasonable attorney fees as may be awarded in the Court's discretion pursuant to statute;
3. For all costs of suit, including but not limited to filing fees, service of process fees, investigative costs; and
4. For such other and further relief as this Court may deem just and proper.

As to the Third Count against each defendant, jointly and severally:

1. For Plaintiff's damages in the amount of \$1,500, or in an amount to be proved at trial;
2. For all costs of suit, including but not limited to filing fees, service of process fees, investigative costs, and attorney fees if allowed by law; and
3. For such other and further relief as this Court may deem just and proper.

Dated: March 25, 2020. Respectfully submitted,

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/s/ Bruce H. Orr
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Of Attorneys for Plaintiff